

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

**July 1, 2009 Workers' Compensation Claims Cost Benchmark
and Pure Premium Rates**

File No. REG-2009-00015

Notice Date: March 30, 2009

Approval of the Workers' Compensation Claims Cost Benchmark and Advisory Pure Premium Rates and proposed revisions to the Insurance Commissioner's Regulations pertaining to Experience Rating to be effective July 1, 2009.

NOTICE AND SUBJECT OF PUBLIC HEARING

Notice is hereby given that the Insurance Commissioner will hold a public hearing in response to a filing, submitted on March 27, 2009, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB"), to consider the following:

- Approval of the Workers' Compensation Claims Cost Benchmark and advisory pure premium rates developed by the WCIRB as a rating organization on behalf of its member insurers.
- Approval of amendments to the California Workers' Compensation Experience Rating Plan—1995 as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

**April 28, 2009 – 10:00 AM
California Department of Insurance
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California**

AUTHORITY AND REFERENCE

Workers' Compensation Claims Cost Benchmark and Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for each employee classification on behalf of its member insurers for submission to the Insurance Commissioner for issuance or approval. The WCIRB also submits an overall rate adjustment that measures the change in costs to the California worker's compensation system, designated by the Commissioner as the Workers' Compensation Claims Cost Benchmark, in addition to the changes to the pure premium rates for each classification.

The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the Insurance Commissioner to require insurers to use the Claims Cost Benchmark or pure premium rates issued or approved by the Insurance Commissioner. Accordingly, the Claims Cost Benchmark and pure premium rates issued or approved by the Insurance Commissioner are an estimate of the workers' compensation claims costs and are advisory only. However, all insurers must submit their rates for review to the Insurance Commissioner prior to their use, and an insurer's filed workers' compensation rates are public information.

Uniform Plans and Regulations

The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations are promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11750 and 11750.3, the WCIRB has developed and submitted for Insurance Commissioner's approval pure premium rates for its member insurers. Pursuant to Insurance Code Sections 11734 and 11751.5, the Insurance Commissioner has designated the WCIRB as his statistical agent. As the designated statistical agent, the WCIRB has filed revisions to the California Workers' Compensation Experience Rating Plan—1995 for approval. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Experience Rating Plan—1995 is mandatory.

The pure premium rates as well as amendments to the California Workers' Compensation Experience Rating Plan—1995 recommended by the WCIRB to be effective July 1, 2009 are detailed in the WCIRB's filing and summarized below.

APPROVE CLAIMS COST BENCHMARK AND PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the Insurance Commissioner to be effective July 1, 2009 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after July 1, 2009. The corresponding overall pure premium rate level change or claims cost benchmark is 24.4% greater than the claims cost benchmark approved by the Insurance Commissioner to be effective January 1, 2009. The proposed pure premium rates for each of the 497 standard classifications are 24.4% higher than the pure premium rates effective January 1, 2009.

The proposed 24.4% increase is based on (1) insurer losses incurred during 2008 and prior accident years valued as of December 31, 2008; (2) insurer loss adjustment expenses for 2007 and prior years; (3) loss ratio projection methodologies similar to those underlying the WCIRB's January 1, 2009 pure premium rate filing; (4) loss adjustment expense methodologies that are the same as those underlying the WCIRB's January 1, 2009 pure premium rate filing; and (5) increases in the cost of losses and loss adjustment expenses expected to emerge as a result of two recent Workers' Compensation Appeals Board (WCAB) decisions. (*Ogilvie v. City and County of San Francisco*, *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District*).

AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN—1995

The WCIRB recommends that the following revision to the California Workers' Compensation Experience Rating Plan—1995 become effective July 1, 2009 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after July 1, 2009.

- Amend Section III, *Eligibility and Experience Period*, Rule 1, *Eligibility Requirements for California Workers' Compensation Insurance*, to adjust the experience rating eligibility threshold from \$15,700 to \$19,531 to reflect the proposed change in the overall pure premium rates.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the California Workers' Compensation Experience Rating Plan—1995 may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold and based upon an employer's claim experience.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Insurance Commissioner cannot determine whether or not there may be a cost or savings to local agencies and school districts, but there will not be any new programs mandated on any local agencies or school districts as a result of the proposed regulations, if adopted as proposed herein. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, they may result in higher costs to local agencies or school districts insured for workers' compensation. The amendments to the California Workers' Compensation Experience Rating Plan—1995 may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold and based upon an employer's claim experience.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner has determined that the proposed regulations may or may not have a significant effect on small businesses. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurance companies. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the California Workers' Compensation Experience Rating Plan—1995 may or may not result in costs or savings depending upon whether a small business employer is above or below the experience rating eligibility threshold and based upon an employer's claim experience.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the Insurance Commissioner expects that the proposed regulations may or may not have a significant effect on private persons or entities. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurance companies. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the California Workers' Compensation Experience Rating Plan—1995 may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold and based upon an employer's claim experience.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attn: Christopher A. Citko
Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

(916) 492-3187
(916) 324-1883 (FAX)
citkoc@insurance.ca.gov

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address, FAX number, or email address listed above no later than 5:00 PM on May 1, 2009.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may be viewed or downloaded from the Regulatory Filings section of the WCIRB website (www.wcirbonline.org).

ACCESS TO RULE-MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to the WCIRB's filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 AM and 5:00 PM, Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

Dated: March 30, 2009

STEVE POIZNER
Insurance Commissioner

By _____
Christopher A. Citko
Senior Staff Counsel